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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 CLARISSA ORBETA RODRIGUEZ,  
12 Plaintiff,  
13 v.  
14 DISCOVERY BANK, et al.,  
15 Defendants.

Case No. 11cv2155 BTM(NLS)

**ORDER GRANTING MOTION FOR  
SUMMARY JUDGMENT AND  
DENYING MOTION TO STRIKE**

16 Defendants Bishop, White, Marshall & Weibel, P.S. ("BMW"), William L. Bishop, Jr.,  
17 Krista L. White, Ann T. Marshall, David A. Weibel, Jerome M. Yalon, Jr., and Samantha Blue  
18 (collectively "Defendants") have filed a motion for summary judgment as well as a motion to  
19 strike portions of Plaintiff's opposition brief. For the reasons discussed below, the Court  
20 **GRANTS** the motion for summary judgment and **DENIES** the motion to strike.  
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22 **I. FACTUAL BACKGROUND**  
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24 In a letter dated October 13, 2009, BMW notified Plaintiff that Discover Bank  
25 ("Discover") had retained the firm to collect its claim against Plaintiff for the balance owing  
26 on her Discover Card account. (Ex. 1 to White Decl.) The letter listed the account number  
27 as well as an account balance of \$9,421.83.

28 On October 29, 2009, Plaintiff requested validation of the debt. (Compl. Ex. A.)  
Specifically, Plaintiff requested a "first-hand accounting of the alleged original creditor," "a

1 sworn affidavit, signed . . . by a first party who had actual first-hand knowledge of the alleged  
2 account,” and a copy of the contract.

3 On November 4, 2009, BMW sent a “settlement offer” to Plaintiff. (Compl. Ex. B.)  
4 The letter encouraged Plaintiff to contact BMW within 30 days to settle her account for a  
5 substantial discount.

6 On November 30, 2009, BMW responded to Plaintiff’s request for validation of the  
7 debt by enclosing the governing Cardmember Agreement as well as copies of monthly  
8 statements of Plaintiff’s Discover Card account. (Compl. Ex. D.)

9 On January 28, 2010, BMW sent another “settlement offer” to Plaintiff. (Compl. Ex.  
10 C.)

11 In a letter dated February 6, 2010, Plaintiff disputed the validity of the debt and  
12 demanded further documents from BMW, including, among other things, a contract signed  
13 by her, certified copies of initial balance sheets, and documentation evidencing that BMW  
14 had authority to collect the debt on Discover’s behalf. (Compl. Ex. E.)

15 On April 13, 2010, BMW filed a Complaint on behalf of Discover against Plaintiff in  
16 the Superior Court of California, County of San Diego (Case No. 37-2010-00089800-CL-CL-  
17 CTL). (Compl. Ex. F.) Plaintiff answered the Complaint after filing a demurrer. (Compl. Ex.  
18 G.) On October 4, 2010, BMW filed a motion for summary judgment on behalf of Discover.  
19 (Id.)

20 Plaintiff did not file any opposition to the motion for summary judgment, and on  
21 February 10, 2011, the Superior Court entered judgment for Discover and against Plaintiff  
22 in the amount of \$11,206.33, which included the \$9,421.83 as well as \$484.50 in costs and  
23 \$1,300 in attorney’s fees. (Ex. 7 to White Decl.) The costs and attorney’s fees were  
24 awarded pursuant to the governing account agreement which allowed for the recovery of  
25 such sums. (Ex. 5 to White Decl., ¶¶ 2, 7.)

26 On July 29, 2011, BMW sent Plaintiff a notice of judgment, which informed Plaintiff  
27 that a judgment in the amount of \$11,206.33 had been entered against Plaintiff and that  
28 BMW was in the process of reviewing her file to determine potential post-judgment

remedies. (Compl. Ex. H.) On August 25, 2011, BMW sent Plaintiff a letter which stated, "A judgment has been entered against you in the above referenced case. We are in the process of preparing a Wage Garnishment to be served on your employer, KAISER PERMANENTE INTERNATIONAL." (Compl. Ex. I.)

Plaintiff commenced this action on September 16, 2011. Plaintiff names as defendants Discover Bank, BMW, the named partners of BMW, and two employees of BMW (Jerome M. Yalon and Samanta Blue). Plaintiff alleges that Defendants have violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692, et seq.

After Defendants filed their motion for summary judgment in this case, Plaintiff filed an Ex Parte Motion to Vacate a Void Judgment and Writ of Execution in the Superior Court. (Zimmerman Decl. (Ex. 2 to Rosenberg Decl.), ¶ 6.) Plaintiff argued that the judgment should be vacated because she did not get notice of the motion for summary judgment and because the evidence submitted by BMW in support of the motion was inconsistent and/or fraudulent. On December 9, 2011, the Superior Court denied Plaintiff's motion, ruling that it was untimely and that Plaintiff had not been diligent in seeking relief. (Ex. 4 to Rosenberg Decl.)

## II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure if the moving party demonstrates the absence of a genuine issue of material fact and entitlement to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). A fact is material when, under the governing substantive law, it could affect the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Freeman v. Arpaio, 125 F.3d 732, 735 (9th Cir. 1997). A dispute is genuine if a reasonable jury could return a verdict for the nonmoving party. Anderson, 477 U.S. at 248.

A party seeking summary judgment always bears the initial burden of establishing the absence of a genuine issue of material fact. Celotex, 477 U.S. at 323. The moving party can satisfy this burden in two ways: (1) by presenting evidence that negates an essential element

1 of the nonmoving party's case; or (2) by demonstrating that the nonmoving party failed to  
2 establish an essential element of the nonmoving party's case on which the nonmoving party  
3 bears the burden of proving at trial. Id. at 322-23. "Disputes over irrelevant or unnecessary  
4 facts will not preclude a grant of summary judgment." T.W. Elec. Serv., Inc. v. Pacific Elec.  
5 Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987).

6 Once the moving party establishes the absence of genuine issues of material fact, the  
7 burden shifts to the nonmoving party to set forth facts showing that a genuine issue of  
8 disputed fact remains. Celotex, 477 U.S. at 314. The nonmoving party cannot oppose a  
9 properly supported summary judgment motion by "rest[ing] on mere allegations or denials  
10 of his pleadings." Anderson, 477 U.S. at 256. When ruling on a summary judgment motion,  
11 the court must view all inferences drawn from the underlying facts in the light most favorable  
12 to the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,  
13 587 (1986).

### 14 15 **III. DISCUSSION**

16 Defendants move for summary judgment on all of Plaintiff's FDCPA claims. As  
17 discussed below, the Court finds that Plaintiff has failed to raise a triable issue of material  
18 fact with respect to her claims and therefore grants summary judgment in favor of  
19 Defendants.

20 Plaintiff alleges that Defendants have violated: (1) 15 U.S.C. § 1692e(2), by the "false  
21 representation of the character, amount, or legal status of any debt"; (2) 15 U.S.C. §  
22 1692e(5), by communicating a "threat to take any action that cannot legally be taken or that  
23 is not intended to be taken"; (3) 15 U.S.C. § 1692f(1), by using unfair or unconscionable  
24 means to collect or attempt to collect any debt – i.e., attempting to collect an amount that is  
25 not "expressly authorized by the agreement creating the debt or permitted by law"; (4) and  
26 15 U.S.C. § 1692g(b), by attempting to collect a debt prior to providing verification of the debt  
27 in accordance with § 1692g(b).

28 Plaintiff's main argument is that Defendants continued to attempt to collect the debt

1 even though Defendants did not provide proper verification of the debt in response to  
2 Plaintiff's request. Plaintiff contends that Defendants' November 30, 2009 response to her  
3 verification request was legally insufficient and that, therefore, Defendants' actions on  
4 October 4, 2010 (filing of summary judgment), December 3, 2010 (filing of a declaration in  
5 support of motion for summary judgment), February 10, 2010 (entry of judgment on motion  
6 for summary judgment), July 29, 2011 (letter informing Plaintiff of judgment and advising her  
7 that BMW was considering post-judgment remedies), and August 25, 2011 (letter re: wage  
8 garnishment) were not authorized and violated the FDCPA.

9 Plaintiff misunderstands Defendants' duty with respect to verification of the debt. The  
10 Ninth Circuit has made it clear that "verification of a debt involves nothing more than the debt  
11 collector confirming in writing that the amount being demanded is what the creditor is  
12 claiming is owed." Clark v. Capital Credit & Collection Servs., Inc., 460 F.3d 1162, 1173-74  
13 (9th Cir. 2006) (quoting Chaudhry v. Gallerizzo, 174 F.3d 394, 406 (4th Cir. 1999)). In Clark,  
14 the defendant obtained information about the nature and balance of the outstanding bill from  
15 the creditor and sent the plaintiffs a copy of the itemized statement provided by the creditor.  
16 The Ninth Circuit reasoned that the defendants were entitled to rely on their client's  
17 statements to verify the debt and did not have a duty to investigate independently the amount  
18 of the claimed debt. Id. at 1174.

19 Defendants in this case provided Plaintiff with a copy of the governing Cardmember  
20 Agreement as well as copies of monthly statements obtained from Discover that reflect the  
21 balance of \$9,421.83. (Compl. Ex. D.) Thus, Defendants satisfied the requirement that they  
22 confirm with their client the amount being claimed. See Healey v. Trans Union LLC, 2011  
23 WL 1900149, at \* 8 (W.D. Wash. May 18, 2011) (holding that the defendant debt collector  
24 satisfied its obligation to verify the debt by mailing a copy of the itemized billing statement  
25 on plaintiff's Sprint/Embarq account,); Worch v. Wolpoff & Abramson, 477 F. Supp. 2d 1015  
26 (E.D. Mo. 2007) (defendant satisfied requirement of verification of debt by providing the  
27 plaintiff with bill statements).

28 Defendants' verification was legally adequate. Defendants were not required to

1 provide affidavits or proof that they were allowed to collect the debt on Discover's behalf.  
2 Therefore, Defendants did not violate the FDCPA by attempting to collect a debt prior to  
3 providing verification as required by 15 U.S.C. § 1692g(b).<sup>1</sup>

4 Plaintiff does not provide any evidence that she does not owe the debt or that the  
5 amount of the claimed debt is improper. Rather, Plaintiff appears to argue that Defendants  
6 should not be allowed to collect on the Superior Court's judgment because she did not  
7 receive notice of the motion for summary judgment, and the evidence submitted by  
8 Defendants in support of their motion was inadmissible, inconsistent, and/or fraudulent.  
9 Plaintiff explains, "Defendant [Plaintiff in this case] has the right to have her case properly  
10 heard before the court and to have the decision based on the merits of the case and not a  
11 default judgment due to her lack of notice in order to defend against the Motion for Summary  
12 Judgment by Plaintiffs." (Opp. Br. at 14:22-26.) Plaintiff contends that the summary  
13 judgment is void.

14 This Court, however, cannot reexamine or set aside the state court's judgment. Under  
15 the Rooker-Feldman doctrine, federal courts cannot exercise appellate jurisdiction over final  
16 state court judgments. Henrichs v. Valley View Dev., 474 F.3d 609, 613 (9th Cir. 2007).  
17 "Essentially, the doctrine bars state-court losers complaining of injuries caused by state-court  
18 judgments rendered before the district court proceedings commenced from asking district  
19 courts to review and reject those judgments." Id. (internal quotation marks omitted).

20 To the extent Plaintiff asks this Court to find that the state court judgment is void, the  
21 Court lacks jurisdiction over Plaintiff's claims. The facts of this case are similar to those in  
22 Grant v. Unifund CCR Partners, \_\_\_ F. Supp. 2d \_\_\_, 2012 WL 379911 (C.D. Cal. Feb. 6,  
23 2012). In Grant, the plaintiff was sued by the debt collector in state court, and the debt  
24 collector obtained a default judgment against plaintiff. Plaintiff sued the debt collector in  
25 federal court, alleging, among other things, violations of the FDCPA. The Court held that to  
26 the extent the plaintiff's claims were premised on allegations that plaintiff was never served

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27  
28 <sup>1</sup> Defendants arguably attempted to collect a debt prior to verification when they sent  
the settlement offer dated November 4, 2009. However, any FDCPA claim based on this  
letter is barred by the one-year statute of limitations. 15 U.S.C. § 1692k(d).

with the summons and complaint in the state action, plaintiff did not owe the debt at issue, the defendant debt collector improperly garnished her wages, or the affidavits submitted in support of the debt collector's request for default judgment were "false and fraudulent," plaintiff's claims were barred by the Rooker-Feldman doctrine. See also Fleming v. Gordon Law Group, P.C., 723 F. Supp. 2d 1219 (N.D. Cal. 2010) ("[T]here is no question that the Rooker-Feldman doctrine bars a district court from reviewing an FDCPA claim that challenges the validity of a debt authorized by a state court judgment."); Williams v. Cavalry Portfolios Servs., LLC, 2010 WL 2889656 (C.D. Cal. July 20, 2010) (holding that plaintiff was essentially seeking relief from state court default judgment and that plaintiff's FDCPA claims were precluded by Rooker-Feldman doctrine).<sup>2</sup>

Plaintiff has not raised a triable issue of material fact with respect to her FDCPA claims. Therefore, Defendants' motion for summary judgment is **GRANTED**. The Court **GRANTS** summary judgment in favor of non-moving defendant Discover Bank for the same reasons.

Defendants have filed a motion to strike portions of Plaintiff's opposition brief where Plaintiff makes arguments regarding fraud. Defendants object that Plaintiff did not include a fraud claim in her Complaint. The Court **DENIES** the motion to strike. The Court has considered Defendants objections to Plaintiff's fraud arguments and does not find it necessary or proper to strike portions of Plaintiff's brief.<sup>3</sup>

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<sup>2</sup> The Rooker-Feldman doctrine does not bar cases that are based on "extrinsic fraud" on the state court, which is defined as "conduct which prevents a party from presenting his claim in court." Kougasian v. TMSL, Inc., 359 F.3d 1136, 1140 (9th Cir. 2004). Plaintiff's claim that she was not served with the summary judgment motion could be construed as a claim of extrinsic fraud. However, she raised this argument with the state court, which held that Plaintiff failed to bring a timely motion for relief. The state court explained that Plaintiff admitted that she was aware as early as February 15, 2011 that the motion for summary judgment had been granted, yet did not file a motion to vacate until November 23, 2011. (Ex. 4 to Rosenberg Decl.) Thus, the issue of whether Plaintiff was prevented by Defendants from presenting her case in the state court action has already been litigated in state court, and this Court lacks jurisdiction to review the state court decision. See Reusser v. Wachovia, 525 F.3d 855, 859-60 (9th Cir. 2008) (explaining that plaintiff's claims of extrinsic fraud had already been litigated in state court in connection with plaintiff's motion to vacate default judgment and that plaintiff's claims were therefore barred by Rooker-Feldman).

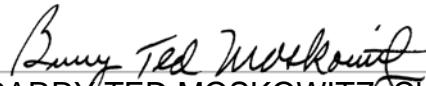
<sup>3</sup> Fed. R. Civ. P. 12(f) only applies to pleadings. See Sidney-Vinstein v. A.H. Robins Co., 697 F.2d 880, 885 (9th Cir. 1983) (explaining that district court erred in striking motion for reconsideration under Rule 12); Pimentel & Sons Guitar Makers, Inc. v. Pimentel, 229

1 **IV. CONCLUSION**

2 For the reasons discussed above, Defendants' motion for summary judgment is  
3 **GRANTED** and Defendants' motion to strike is **DENIED**. Summary judgment is granted in  
4 favor of all of the defendants. The Clerk shall enter judgment accordingly.

5 **IT IS SO ORDERED.**

6 DATED: April 30, 2012

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8 BARRY TED MOSKOWITZ, Chief Judge  
United States District Court

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F.R.D. 201 (D.N.M. 2005) (denying motion to strike portions of reply brief and evidence because motions, memoranda, and affidavits may not be attacked by motion to strike).